

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY SMITH,

No C-09-5862 VRW (PR)

Petitioner,

ORDER OF DISMISSAL

v

GLENN DWYER, Warden,

Respondent.

\_\_\_\_\_ /


On July 1, 2010, the court issued an order granting petitioner leave to proceed in forma pauperis and dismissing the petition with leave to amend. Doc #6. The court granted petitioner leave to amend because "[i]n its present form, the petition is not manageable." Id at 2. The court noted that petitioner had "filed a standard form petition for a writ of habeas corpus, along with hundreds of pages of attachments that appear to include post-conviction petitions filed previously in the state courts" and that "[a]llthough petitioner references in the \* \* \* petition claims raised in state court, it remains unclear what legal claims petitioner is raising in this court and the factual bases upon which

1 they rest." Id. The court gave petitioner thirty (30) days from  
2 the date of the order to file an amended petition and warned that  
3 "[f]ailure to amend within the designated time will result in the  
4 dismissal of the case. The amended petition completely replaces the  
5 original petition; petitioner must include in it all the claims he  
6 wishes to present. He may not incorporate any other document by  
7 reference." Id at 3

8 Over thirty (30) days have elapsed since petitioner was  
9 ordered to file an amended petition. He has failed to do so.  
10 Accordingly, the petition for writ of habeas corpus in the  
11 above-captioned action is DISMISSED without prejudice for failure to  
12 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

13 The clerk is directed to terminate any pending motions as  
14 moot and close the file.

15 IT IS SO ORDERED.

16   
17 \_\_\_\_\_  
18 VAUGHN R WALKER  
19 United States District Chief Judge  
20  
21  
22  
23  
24  
25

26 G:\PRO-SE\VRW\HC.09\Smith-09-5862-dismiss-failure to file fap.wpd  
27  
28